

### **III. REMARKS**

Claims 24-34 and 40-44, 46-53, 55, and 62-67 are pending in this application. Claims 1-23, 35-39, 45, 54, and 56-61 have been canceled. Reconsideration of this application in light of the above amendments and the following remarks is requested.

#### **Rejections under 35 U.S.C. § 102**

Claims 24-26, 28-34, 40-41, 44, and 46-60 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,702,455 to Saggar ("Saggar"). Claims 24-27, 31-33, 40-44, 46-47, 49-52, 54, 55, 58, 59, and 61 also stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,776,197 to Rabbe et al. ("Rabbe"). The PTO provides in MPEP § 2131 that

"[t]o anticipate a claim, the reference must teach every element of the claim...."

However, neither the Saggar nor the Rabbe reference disclose each element of the rejected claims.

#### **Claim 24**

Independent claim 24, as amended, recites:

A vertebral replacement implant for interposition in a space left by one or more removed vertebrae between adjacent intact vertebrae, comprising:  
a tubular body having opposite ends and sized to span at least a portion of the space between the intact vertebrae;  
a pair of endplate assemblies attached to each of the opposite ends of the body, each of the endplate assemblies having an end surface and a tubular portion defining a bore therethrough extending through the end surface; and  
a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity, wherein the basket is adapted to be disposed within at least one of the bores.

Neither the Saggar nor the Rabbe reference disclose a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity, wherein the basket is adapted to be disposed within at least one of the bores.

#### **Claim 40**

Independent claim 40, as amended, recites:

A graft containment device for use with a vertebral implant having an internal cavity, the graft containment device comprising:  
a sidewall circumscribing a base;  
an open end opposite the base; and  
an engagement device for maintaining the graft containment device within the cavity of the vertebral implant.

The Saggar reference does not disclose a *graft containment* device within the internal cavity of a vertebral implant. Further, the plate 17 of Saggar is not a graft containment device with a sidewall circumscribing a base, an open end opposite the base, and an engagement device for maintaining the graft containment device within the cavity of the vertebral implant. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

#### Claim 46

Independent claim 46 recites:

A tubular vertebral implant device for interposition between two vertebral endplates, the tubular vertebral implant device comprising  
a tubular assembly having a sidewall; and  
a graft containment device, comprising an open end and a perforated base plate opposite the open end, disposed in at least one end of the tubular assembly.

The Saggar reference does not disclose a *graft containment* device, having an open end and a perforated based plate opposite the open end, disposed in at least one end of the tubular assembly. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

#### New Claims

##### *Claim 64*

New claim 64 recites a method of installing a vertebral implant and comprises the elements, “selecting a material receptacle, the receptacle comprising a sidewall and a base portion which define a cavity” and “inserting bone growth promoting material into the cavity and against the base portion” which are not found in the cited prior art.

##### *Claim 65*

New claim 65 recites a vertebral implant and comprises “a tubular receptacle member sized to extend into the through bore, the tubular receptacle member bounded at one end by a perforated base to form a cavity adapted to receive graft material” which are not found in the cited prior art.

**IV. Conclusion**

It is clear from all of the foregoing that independent claims 24, 40, 46, 64, and 65 are in condition for allowance. Dependent claims 25-34, 41-44, 47-53, 55, 62-63, and 66-67 depend from and further limit the independent claims and therefore are allowable as well. An early formal notice of allowance of claims 24-34 and 40-44, 46-53, 55, and 62-67 is requested.

Any fees not covered by the enclosed check may be charged to Haynes and Boone, LLP's Deposit Account No. 08-1394.

Respectfully submitted,




Julie M. Nickols  
Registration No. 50,826

Dated: September 2, 2005  
HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202-3789  
Telephone: 972/739-8640  
Facsimile: 214/200-0853

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By:   
Gayle Conner